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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	CS Docket No. 95-61

To: The Commission

COMMENTS OF PAY-PER-VIEW NETWORK, INC. D/B/A VIEWER'S CHOICE

Pay-Per-View Network, Inc. d/b/a Viewer's Choice ("Viewer's Choice"), by its attorneys, hereby offers the following comments in response to the Commission's Notice of Inquiry ("NOI") released May 24, 1995, in the above-captioned proceeding.

I. INTRODUCTION

The Commission has issued the NOI in this proceeding to assist it in the preparation of its second annual report assessing the status of competition in the market for the delivery of video programming as required by Section 19(g) of the Cable Television Consumer Protection and Competition Act of 1992. 47 U.S.C. § 548(f). In Paragraphs 88 and 89 of the NOI, the Commission indicated its intent to update the information presented in its 1994 Competition Report regarding vertically integrated and

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unaffiliated programming services. The Commission has identified specific topics on which it desires information, and in these Comments Viewer's Choice will respond with respect to those areas in which it has relevant data to provide.

II. BACKGROUND

Viewer's Choice is a leading provider of pay-per-view ("PPV") video programming services in the United States. It is owned by two major motion picture companies and seven multiple system cable operators.[1] In 1987, when Viewer's Choice first began operations under the name of Home Premier Television, it provided one analog channel of pay-per-view programming. Commencing July 1, 1995, Viewer's Choice will be providing cable operators with one analog channel and five digital channels. By using digital compression technology, the Company is able to transmit five channels over a single satellite transponder.

Viewer's Choice's programming channels are available to cable operators who may take one or more of the channels depending on their system capacity and, in many instances, the restrictions imposed by the FCC's "channel occupancy" rule which limits the carriage of programming in which the cable operator has an

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1 Each of the following holds an equal 10% interest in Viewer's Choice: Warner Bros., Walt Disney, Time Warner Cable, Continental Cable, Comcast, Newhouse, Liberty and Viacom Cable. Cox Cable owns a 20% interest.

interest to 40% of the system's channel capacity. 47 C.F.R. § 76.504. The Viewer's Choice services are currently structured as follows:

The primary Viewer's Choice service is a variety channel which is available almost twenty-four (24) hours per day and carries movies, events and other types of video programming having broad viewer appeal. The second channel is named "Hot Choice" and carries primarily action, adventure, horror and science fiction movies and late evening specials. Viewer's Choice offers two "Continuous Hits" channels each of which carries a single box-office hit movie for a one week period. The movies on these "Continuous Hits" channels are replayed continuously. The final two "Continuous Hits" channels are box-office hit movies scheduled on a daily rotation.

New technologies, such as DBS and video dialtone ("VDT") will have abundant capacity through digital compression techniques and will be able to take full advantage of Viewer's Choice's current and future expanded service offerings. The bulk of Viewer's Choice's current audience, however, is comprised of subscribers of cable systems where channel capacities are, in many cases, more limited, and there the Commission's rules can operate to restrict the number of Viewer's Choice services available to such subscribers. With increasing competition from DBS and VDT, cable operators affiliated with Viewer's Choice are unfairly restricted in what they can offer their subscribers by the restrictions imposed by the rules and are confronted with competitors offering Viewer's Choice services they are barred from carrying. The FCC restrictions may prevent many current cable subscribers from taking advantage of Viewer's Choice's next generation video on demand services until all of a system's subscribers have been converted to digital technology.

III. RESPONSE TO COMMISSION QUESTIONS ON VERTICALLY INTEGRATED PROGRAMMING SERVICES

In response to the Commission's request, we are furnishing information regarding those questions which apply to Viewer's Choice. Some of the matters raised by the Commission touch on areas which are competitively sensitive, and Viewer's Choice does not believe it would be appropriate to provide this information on the public record. With that caveat, we will address the issues raised by the Commission in subparagraphs (a), (d) and (e) of Paragraph 88 of the NOI. The other subparagraphs of Paragraph 88 seek information either not in the possession of Viewer's Choice or not applicable to Viewer's Choice's operations.

(a) The ownership of Viewer's Choice is specified in footnote 1, supra.

(d) One or more of the Viewer's Choice channels are carried on more than 650 cable systems, are available to more than 14 million addressable subscribers, and include 30 million addressable subscriber units.

(e) Because of the nature of our pay-per-view service, audience ratings are not relevant.

In Paragraph 89 (subparagraphs (a) and (b)) of the NOI, the Commission solicits information with respect to the effect of the channel occupancy rule on the availability of programming. As discussed above, Viewer's Choice believes these occupancy limits to be contrary to the public interest precisely because they restrict cable subscribers' access to our programming even though they might prefer it to other programming carried in its place.

(a) While it is difficult to precisely quantify the impact of the channel occupancy rule, it is clear to Viewer's Choice that these restrictions have significantly limited the ability of affiliated cable systems to offer as many of the pay-per-view services available from Viewer's Choice as they otherwise would have carried to satisfy consumer demand. Because cable operators are loath to have empty channels, it is likely that the restrictions have resulted in increased carriage of unaffiliated channels simply to prevent a channel from being vacant. This does not necessarily serve the public interest, however, as the programming carried on that vacant channel may well be much less desirable to the consumer than the programming barred from that channel through the operation of the channel occupancy rule.

(b) Research conducted by Viewer's Choice has indicated that subscribers desire to have a greater number of choices during each viewing hour. In response to this research, Viewer's Choice recently changed one of its weekly "Continuous Hits" channels to a daily channel offering a different movie each day. Viewer's

Choice would like to offer subscribers even more choices by creating additional channels and moving closer to a "video-on-demand" capability. Because of the occupancy rule limitations and the fact that some of the largest cable MSOs have "attributable interests" in Viewer's Choice, it is difficult for Viewer's Choice to implement this strategy. Only upon the rebuild of existing affiliated cable systems or the employment of compression techniques on the systems will sufficient capacity be available to counteract the occupancy limitations. As a result, the ability of Viewer's Choice to expand its programming services is very limited.

CONCLUSION

In the foregoing comments, Viewer's Choice has attempted to respond to the questions applicable to the services it provides. As suggested in these Comments we are troubled by the Commission's occupancy rules which do not reflect any deference to consumer preference. We believe the occupancy restrictions to be fundamentally unsound in that they are based on an unsubstantiated premise that a cable operator with a minority, non-controlling interest in Viewer's Choice would carry that programming in preference to superior programming offered by an unaffiliated vendor. Especially in an environment where the cable subscriber has alternative choices from DBS, wireless cable and shortly from video dialtone programmers, these artificial restraints on competition are no longer warranted. There is simply no evidence that the occupancy restrictions have resulted in greater consumer satisfaction, and to the extent that they interfere with consumer satisfaction by depriving the public of the programming it prefers, they are themselves contrary to the public interest.

Respectfully submitted,

PAY-PER-VIEW NETWORK, INC.
d/b/a VIEWER'S CHOICE

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